IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/10/2002

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THE HONOURABLE MR.JUSTICE P.K.MISRA

W.P.NO.9986 OF 1999
AND
W.M.P.NOS.14192 AND 15565 OF 1999

Mrs.C. Vasantha Wilson
Headmistress
L.M. Middle School
Levinchipuram – 627 114
Tirunelveli District .. Petitioner

-Vs-

1. The District Elementary
Educational Officer
at Palayamkottai
Tirunelveli

2. The Assistant Education Officer
Valliyoor

3. Corporate Manager
Corporate Management School
Kanyakumari Diocese, C.S.I,
Nagercoil-629 011

4. Correspondent
L.M.Middle School
Levinchipuram-627 114
Tirunelveli District .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.P.S.Sivashanmugasundaram
AGP(E) for RR1 and 2
Mr.N.Paul Vasanthakumar for RR3 & 4

:ORDER

Heard the learned counsel appearing for the parties.

2. The petitioner herein has challenged the order of reversion.
Though several contentions have been raised, it is unnecessary to notice all the contentions as in my opinion, the order of reversion and other punishments have to be quashed on account of the fact that after completion of the enquiry and before passing of the impugned order of punishment, no further opportunity was given to show cause, and the copy of the enquiry report was not furnished.
3. In view of the decision in UNION OF INDIA AND OTHERS VS. MOHD. RAMZAN KHAN reported in (1991) 1 SCC 588 it is well settled that before imposing a major penalty, the delinquent is to be given an opportunity to show case against the proposed punishment and for that purpose, a copy of the enquiry report is also required to be given to the delinquent.
4. The learned counsel for the respondents has submitted that in view of the decision reported in AIR 1996 SC 1669 (STATE BANK OF PATIALA AND OTHERS VS. S.K.SHARMA), unless prejudice is caused, the order of punishment need not be quashed merely because of some technical lapses. The learned counsel drawn my attention particularly to the principles summarised in paragraph 32(4)(a) and (b) to the following effect:
"32(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called."

5. I do not see anything in the aforesaid decision, which is contrary to what has been laid in the earlier Supreme Court decision. As observed in the later decision itself, where the procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. In the present case, the petitioner has complained about the lack of opportunity to show cause against the proposed punishment and non furnishing of enquiry report. Such a case obviously will not come to the purview of the decision as highlighted in paragraph 32(4)(a) and (b). In view of the earlier Supreme Court decision, it must be held that the requirement relating to the giving of opportunity to show cause against the proposed punishment and to furnish a copy of the enquiry report is mandatory.
6. For the aforesaid reasons, the impugned order cannot be sustained

and the matter is required to be re-determined by the appropriate Authority, in accordance with law. The copy of the enquiry report shall be furnished to the petitioner, who shall be given an opportunity of filing further reply within a period of two weeks from the date of furnishing of enquiry report. The matter shall be re-determined by the appropriate Authority, in accordance with law, thereafter.

7. The learned counsel appearing for the respondents submitted that the petitioner was placed under suspension originally and after the impugned order was passed, the suspension was revoked and the petitioner was allowed to join in the post of P.G. Assistant and since the impugned order is being revoked and the matter is to be re-determined, the petitioner may be again placed under suspension. In the peculiar facts and circumstances of the case, I feel the interest of justice would be served by directing the status quo as on today shall continue until the matter is re-determined by the appropriate Authority. In other words, the petitioner should be allowed to continue as Secondary Grade Teacher, and if ultimately the petitioner is exonerated, the petitioner should be reinstated in the post of Headmistress. On the other hand, if any other punishment is imposed, such punishment shall take effect from that day.

8. With the above observation, the writ petition is disposed of. Consequently, connected W.M.Ps are closed.

22.10.2002
Index : Yes
Internet : Yes
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